

QUESTIONING OF GOVERNMENT WITNESSES TESTIFYING
ABOUT E.O. 10501 CLASSIFICATION POLICY

1. Clarify matters regarding position(s) and responsibility involving knowledge of E.O. 10501 classification policy and its practical application.

2. What is the subject of E.O. 10501?
(Information and defense are the key words.)

3. What is the first statement in the order? (Whereas it is ESSENTIAL that the citizens of the United States be informed concerning the activities of their government.)
(Essential and be informed)

4. To whom is the Executive Order directed?
What persons are referred to in the order as being required specifically by the President to do something?

NOTE: Throughout the Order, "HEADS OF DEPARTMENTS AND AGENCIES" are directed to take specified action:

Sec. 2(a) Classification Authority
4 Declassification
7(a)(b) Dissemination
Et Cetera

5. The order applies only to departments and agencies under the jurisdiction of the President? Is that correct?

(Yes)

6. It has no application to the Legislative Branch, to Congress?

(No)

7. Does the President's order apply to anybody outside the Executive branch?

(No)

8. Then the Executive Order does not have the force and effect of law in this country?

(No)

9. So, it would be correct to say that a private citizen could not properly be accused of violating the Executive Order since it does not apply to him? Is that right?

(Yes)

10. I now refer to the first sentence of Section 1 of Executive Order 10501, which reads as follows: "Official information which requires protection in the interests of national defense shall be limited to three categories of classification, which in descending order of importance shall carry one of the following designations: Top Secret, Secret, or Confidential." In the phrase, "official information," what does the word "information" mean?

(DoD Dir. 5200.1: Information is defined as Knowledge which can be communicated by any means.)

11. What is the meaning of the complete phrase, "official information"?

(DoD Dir. 5200.1 definition: Information which is owned by, produced by or is subject to the control of the United States.)

12. Would it be correct to say that Executive Order 10501 applies to "official knowledge" which can be communicated by any means?

(NOTE: Yes)

13. Would it be correct to say that the only purpose of the Executive Order is to provide for the protection of "official knowledge"?

(NOTE: Yes)

14. That would apply whether the "official knowledge" is capable of being communicated orally or by being incorporated in a material item, such as a gun or a document?

(NOTE: Yes)

15. Then, would it be correct to say that the Executive Order is not concerned with the safeguarding of a material item itself, such as a document, but only with safeguarding the information that the item could communicate?

(NOTE: Yes.)

16. In considering the application of Executive Order 10501, would it be correct to say that the terms "information" and "document" are interchangeable?

(NOTE: Yes.)

17. I now refer to the term "national defense" as used in the first sentence of Section 1 of the Executive Order. Please explain what "national defense" means as it is used in the order.

(NOTE: Aside from the distinctions in "case law," the best answer would be found in the second "Whereas" of the order: "Preservation of the ability of the United States to protect and defend itself against all hostile or destructive action by covert or overt means."

18. With reference to "the ability of the United States to protect and defend itself," does that mean current and continuing ability, as opposed to past ability?

(NOTE: Yes.)

19. With reference again to the first sentence of Section 1 of the Order, would it have the same meaning if it read: Knowledge which is owned by, produced by or is under the control of the United States and which currently requires protection in the interests of preserving the current and continuing ability of the United States to protect and defend itself against all hostile or destructive action by covert or overt means shall be limited to three categories of classification, and so forth.

(NOTE: Yes.)

20. Would it be correct to say that the Executive Order does not require the protection of knowledge which is outside the control of the United States Government?

(NOTE: Yes.)

21. Would that include knowledge, or information, originally produced by the United States and other information previously owned by the United States but which is now outside the control of the United States Government?

(NOTE: Yes.)

22. Then, would it be correct to say that knowledge which never was subject to control by the United States Government, or which passed out of such control, would not qualify for assignment to or retention in any of the three categories of classification referred to in the first sentence of Section 1, Executive Order 10501?

(NOTE: Yes.)

RE-EMPHASIZE THE POINT.

23. Let us explore the remainder of Section 1 of the Order. The first sentence of the section established three categories of classification, namely, Top Secret, Secret and Confidential. Will you describe the Top Secret category? (Or read the description from the Order.)

24. Would you state the word or phrase that most clearly distinguishes the Top Secret category from the other two?

(NOTE: "Exceptionally grave DAMAGE" is the criterion.

"requires the highest degree of protection" is a distinction of emphasis, and should also be emphasized.

"defense aspect of which is paramount" is also a distinction of emphasis, and should also be emphasized.

But "DAMAGE" is the criterion (EXCEPTIONALLY GRAVE DAMAGE), which could result from unauthorized disclosure.

25. Unless there was official information the unauthorized disclosure of which could result in exceptionally grave damage to the nation, the Top Secret classification could not properly apply? Is that right?

(NOTE: Yes.)

26. Have you ever seen documents bearing the Top Secret marking, other than this Vietnam Study?

NOTE: ASSUMING THAT THE WITNESS HAS (YES), ASK THE NEXT

QUESTION: (Otherwise, ask that: Then, you are not qualified to discuss information, the disclosure of which could result in exceptionally grave damage to the nation?)

27. Have you ever seen a document marked Top Secret which contained information the disclosure of which would not have done exceptionally grave damage to the United States of America?

NOTE: Assuming the answer to be "yes," ASK THE NEXT QUESTION. (If the answer is NO, ask WHAT DAMAGE COULD HAVE RESULTED FROM ANY ONE DISCLOSURE, AND PURSUE THE QUESTIONING TO SHOW THAT NO GRAVE DAMAGE WOULD HAVE OCCURRED.)

28. Then, would it be correct to say that the existence of a Top Secret marking on an item of information, or on knowledge, does not necessarily mean that the marking meets the specific limitation in Executive Order 10501 for its use?

NOTE: Yes (Presumably).

29. In other words, a Top Secret marking on a document could be unauthorized within the meaning of Executive Order 10501? Is that right?

(NOTE: Yes.)

30. Would it be correct to say that the assignment of, or retention of an unauthorized Top Secret marking on an item of information, or knowledge, would be a violation of Executive Order 10501?

NOTE: Yes. (If "No," then, "WHY NOT"? If there is non-adherence to the Order, isn't that a violation of

the specific "shall be limited to" requirement?

31. Do you know of any person being punished for assigning or retaining an unauthorized Top Secret classification on a document in violation of Executive Order 10501? If so, please tell us about the case.

NOTE: No. (Presumably)

32. Have you ever heard of any such case?

NOTE: No. (Presumably)

33. The next classification mentioned in the Order is Secret. Will you describe that category?

NOTE: Should be read precisely.

34. Would you state the word or phrase that most clearly distinguishes the Secret category from the other two?

NOTE: SERIOUS DAMAGE.

35. As in the case of Top Secret, it is the degree of damage that the Secret category is concerned with? Is that correct?

NOTE: Yes.

36. The third classification in the Order is Confidential. Will you describe that category?

NOTE: Preciseness is important.

37. Would you state the word or phrase that most clearly distinguishes the Confidential category from the other two?

NOTE: Prejudicial. (Or prejudicial to the defense interests of the nation---or to national defense.)

38. As in the case of Top Secret and Secret, the Confidential category is concerned with harm, or possible damage to national defense? Is that correct?

NOTE: Yes.

39. Would it be correct to say that the purpose of Executive Order 10501 is to preclude damage to the nation?

NOTE: Yes.

40. The purpose of the Order is not just to define information as such? That is not the purpose, or is it?

NOTE: No.

41. There could be official information of great importance to the people in this nation, the disclosure of which would not harm the United States? Is that correct?

NOTE: Yes.

42. Would it be correct to say that the Confidential category is the threshold category, and that if information could not qualify for the Confidential classification it could not qualify for any classification?

NOTE: Yes.

43. In other words, unless the unauthorized disclosure of an item of official information, or knowledge, could actually be prejudicial to the defense interests of the nation, the item would not qualify for designation as "CONFIDENTIAL" defense information under Executive Order 10501? Is that correct?

44. Have you ever seen a document marked Confidential which contained information the unauthorized disclosure of which would not have been prejudicial to the defense interests of this nation?

NOTE: Yes, presumably. (If "No", pursue the types of documents he has seen, and what damage could have been caused by an unauthorized disclosure.)

IF YES, ASK NO. 45:

45. To your knowledge, is there an appreciable number of documents with classification markings which do not warrant any classification?

NOTE: Yes. (Presumably)

46. Would it be erroneous, incorrect, to refer to an item of information, or knowledge, as being "classified information" if it did not qualify for at least the Confidential classification under Executive Order 10501?

NOTE: Yes.

47. Would it be erroneous, incorrect, to refer to a document as being "classified material" if it did not contain information qualifying for at least the Confidential classification?

NOTE: Yes.

48. Would it be erroneous, incorrect, to refer to the Vietnam Study, a Government exhibit in this case, as being a "classified study," or a "classified report," if it did not contain information qualifying for at least the Confidential classification?

NOTE: Yes.

49. In reviewing your testimony, Executive Order 10501 could not apply to any information other than official information of the Government? Is that correct?

NOTE: Yes.

50. Have you ever seen, or do you know of privately owned information bearing a classification mark?

NOTE: Yes. (Presumably)

IF "NO," ASK: Is there a law or some other restriction against a private individual putting a classification marking on his own material? NOTE: No.

IF "YES", ASK:

51. Would it be erroneous, incorrect to say that the existence of a classification mark on a document shows that the document belongs to the Federal Government?

NOTE: Yes.

52. Now, if an item of information truly qualifies for the designation "official information," it could qualify for protection in the interests of national defense under the Executive Order? Is that correct?

NOTE: Yes.

53. If the information does qualify for protection under the Order, it necessarily must be assigned to at least the Confidential category? Is that correct?

NOTE: Yes.

54. Would it be correct to say that if official information is considered for classification under Executive Order 10501 but cannot qualify even for the Confidential category, there would be no basis for attempting to protect the information in the defense interests of the nation? Is that correct?

NOTE: Yes.

55. The information could be used and disseminated without regard to national defense interests? Is that correct?

NOTE: Yes.

56. Would that apply also to information originally qualifying for a defense classification but which later no longer qualified for retention in any classification category?

NOTE: Yes.